

Senate Bill 432

By: Senators Schaefer of the 50th, Balfour of the 9th, Hudgens of the 47th, Pearson of the 51st, Mullis of the 53rd and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 4 of Title 1 of the Official Code of Georgia Annotated, relating to
2 holidays and observances, so as to recognize the national "Year of the Museum" as 2006; to
3 amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
4 and other trade practices, so as to regulate loans to and abandoned property of museums and
5 archives repositories; to provide a short title; to define certain terms; to provide a process for
6 establishing ownership of property loaned to museums and archives repositories; to provide
7 for notice; to provide for exemptions; to amend Article 5 of Chapter 12 of Title 44 of the
8 Official Code of Georgia Annotated, relating to disposition of unclaimed property, so as to
9 include cross-references; to provide for other related matters; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 4 of Title 1 of the Official Code of Georgia Annotated, relating to holidays and
14 observances, is amended by inserting a new Code section to the end of such chapter, to read
15 as follows:

16 "1-4-16.

17 (a) The General Assembly finds that:

18 (1) Museums nourish minds and spirits by fostering contemplation, exploration, critical
19 thinking, and dialogue to advance knowledge, understanding, and appreciation of history,
20 science, the arts, and the natural world;

21 (2) Museums present exhibitions and programs created through research and scholarship
22 for people to explore new ideas, exchange stories, and discover collections and objects
23 from our cultural and natural heritage;

(3) Museums strengthen and enrich the lives of people by inspiring lifelong learning, serving as repositories and stewards for our unique histories, culture, achievements, and values, and contributing to the livability and economic vitality of our towns and cities;

(4) Museums forge relationships with community partners such as schools, libraries, public broadcasting, and neighborhood and social service organizations to foster civic participation and cultural understanding;

(5) Museums have been serving the American public since 1773, encouraging curiosity and providing a source of enjoyment and education for every generation; and

(6) The American Association of Museums has declared 2006 as the 'Year of the Museum' nationwide.

(b) In recognition of the findings included in subsection (a) of this Code section and at the invitation of the American Association of Museums, 2006 is hereby recognized as the 'Year of the Museum.'

(c) This Code section shall stand repealed on December 31, 2006."

SECTION 2.

Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, is amended by inserting immediately following Article 17A, relating to consignment of art, a new Article 17B to read as follows:

"ARTICLE 17B

10-1-529.1.

This article shall be known and may be cited as the 'Georgia Museum Property Act.'

10-1-529.2.

As used in this article, the term:

(1) 'Archives repository' means a nonprofit organization or a public agency whose primary functions include selecting, preserving, and making available records of historical or enduring value and that is open to the public on a regular basis. Archives repository does not include a public library.

(2) 'Loan' means the placement of property with a museum or archives repository that is not accompanied by a transfer of title of the property to the museum or archives repository and for which there is some record that the owner intended to retain title to the property. Loan does not include transfers between museums, between archives

repositories, or between museums and archives repositories unless the transferring institution specifically provides in writing that the transfer is a loan under this article.

(3) 'Museum' means a nonprofit organization or a public agency that is operated primarily for the purpose of collecting, cataloging, preserving, or exhibiting property of educational, scientific, historic, cultural, or aesthetic interest and that is open to the public on a regular basis. Museum does not include a public library.

(4) 'Property' means personal property.

10-1-529.3.

(a) Each museum or archives repository shall keep accurate records of all property on loan to the museum or archives repository, including the name and address of the owner, if known, and the beginning and ending date of the loan period. At the time that a person makes a loan to a museum or archives repository, the museum or archives repository shall give the owner of the property a copy of this article. If a museum or archives repository is notified of a change in the ownership of any property loaned to a museum or archives repository, the museum or archives repository shall inform the new owner of the provisions of the loan agreement and shall send the new owner a copy of this article. Not less than 90 days before a museum or archives repository changes its address or dissolves, the museum or archives repository shall notify all owners of that change of address or dissolution. If a museum or archives repository becomes the owner of property under Code Section 10-1-529.4 or 10-1-529.5, the museum or archives repository shall maintain any records that the museum or archives repository has regarding the property for not less than two years after the date on which the museum or archives repository becomes the owner of the property.

(b) The owner of property loaned to a museum or archives repository shall provide the museum or archives repository with written notice of any change of the owner's address, of the owner's designated agent, of the designated agent's address, and of the name and address of the new owner if there is a change in the ownership of the property loaned to the museum or archives repository.

10-1-529.4.

(a) Property loaned to a museum or archives repository whose loan has an expiration date is abandoned when there has not been written contact between the owner and the museum or archives repository for at least seven years after that expiration date. If the loan has no expiration date, the property is abandoned when there has not been written contact between

the owner and the museum or archives repository or their successors or assigns for at least seven years after the museum or archives repository took possession of the property.

(b)(1) If a museum or archives repository wishes to acquire title to abandoned property, the museum or archives repository shall, not less than 60 days after property is abandoned under subsection (a) of this Code section, send a notice by certified mail or statutory overnight delivery to the owner's last known address. A copy of such notice shall be simultaneously sent to any known lienholder at such lienholder's last known address. The notice shall contain all of the following:

(A) A statement that the loan is terminated and that the property is abandoned;

(B) A description of the property;

(C) A statement that the museum or archives repository will become the owner of the property if the present owner does not submit a written claim to the property to the museum or archives repository within 60 days after receipt of the notice; and

(D) A statement that the museum or archives repository will make arrangements with the owner to return the property to the owner or dispose of the property as the owner requests if the owner submits a written claim to the property to the museum or archives repository within 60 days after receipt of the notice.

(2) The notice provided for in subsection (a) of this Code section shall be substantially in the following form:

NOTICE OF ABANDONMENT OF PROPERTY

To: _____ (name of owner)

_____ (address of owner)

Please be advised that the loan agreement is terminated for the following property (describe the property in sufficient detail to identify the property):

The above-described property that you loaned to _____ (name and address of museum or archives repository) will be considered abandoned by you and will become the property of _____ (name of museum or archives repository) if you fail to submit to the museum or archives repository a written claim to the property within 60 days after receipt of this notice. If you do submit a written claim to the property within 60 days after receipt of this notice, _____ (name of museum or archives repository) will arrange to return the property to you or dispose of the property as you request. The cost of returning the property to you or disposing of the property is your

responsibility unless you have made other arrangements with the museum or archives repository. _____ (name of person to contact at museum or archives repository and address of museum or archives repository).

(c) If the notice sent by the museum or archives repository under subsection (b) of this Code section is returned to the museum or archives repository undelivered, the museum or archives repository shall give notice of the abandoned property by publication once a week for two consecutive weeks in the official county organs of the county in which the museum or archives repository is situated and the county of the owner's last known address, and on the organization's website, if applicable, containing the following:

(1) The name and last known address of the present owner;

(2) A description of the property;

(3) A statement that the property is abandoned and that the museum or archives repository will become the owner of the property if no person can prove ownership of the property;

(4) A statement that a person claiming ownership of the property shall notify the museum or archives repository in writing of that claim within 60 days after publication of the last legal notice; and

(5) The name and mailing address of the person who may be contacted at the museum or archives repository if a person wants to submit a written claim to the property.

(d) If the museum or archives repository receives a timely written claim for the property from the owner or the owner's agent in response to the notice provided under subsection (b) or (c) of this Code section the museum or archives repository shall return the property to the owner or dispose of the property as the owner requests. The owner shall advise the museum or archives repository in writing as to how the property shall be disposed of or returned to the owner. Costs of returning the property or disposing of the property shall be the responsibility of the owner unless the owner and the museum or archives repository have made other arrangements.

(e) If the museum or archives repository receives a timely written claim for the property from a person other than the person who loaned the property to the museum or archives repository in response to the notice provided under subsection (b) or (c) of this Code section, the museum or archives repository shall, within 60 days after receipt of the written claim, determine if the claim is valid. A claimant shall submit proof of ownership with the claim. If more than one person submits a timely written claim, the museum or archives repository may delay its determination of ownership until the competing claims are resolved by agreement or legal action. If the museum or archives repository determines that the claim is valid or if the competing claims are resolved by agreement or judicial action, the museum or archives repository shall return the property to the claimant

submitting the valid claim or dispose of the property as the valid claimant requests. Costs of returning the property or disposing of the property shall be the responsibility of the valid claimant.

(f) If the museum or archives repository does not receive a timely written claim to the property or if the museum or archives repository determines that no valid timely claim to the property was submitted, the museum or archives repository becomes the owner of the property. The museum or archives repository becomes the owner of the property on the day after the period for submitting a written claim ends or on the day after the museum or archives repository determines that no valid timely written claim was submitted. The museum or archives repository owns the property free from all claims.

10-1-529.5.

(a) Property in the possession of a museum or archives repository which the museum or archives repository has reason to believe may be on loan and for which the museum or archives repository does not know the owner or have any reasonable means of determining the owner becomes the property of the museum or archives repository if no person has claimed the property within seven years after the museum or archives repository or a predecessor or assignor of such museum or archives repository took possession of the property. The museum or archives repository becomes the owner of the property on the day after the seven-year period ends and after following the notification process outlined in subsection (b) of this Code section free from all claims.

(b) The museum or archives repository that wishes to acquire title to undocumented property described in subsection (a) of this Code section shall provide public notice in the manner described in Code Section 10-1-529.4.

(c) On or after July 1, 2006, property that:

(1) Is found in or on property controlled by the museum;

(2) Is from an unknown source; and

(3) Might reasonably be assumed to have been intended as a gift to the museum

is conclusively presumed to be a gift to the museum if ownership of the property is not claimed by a person within 90 days of its discovery.

10-1-529.6.

(a) Unless there is a written loan agreement to the contrary, a museum or archives repository may apply conservation measures to property on loan to the museum or archives repository without the lender's permission or formal notice if action is required to protect the property on loan or other property in the custody of the museum or archives repository

1 or the property on loan is a hazard to the health and safety of the public or the museum or
2 archives repository staff, and either:

3 (1) The museum or archives repository is unable to reach the lender at the lender's last
4 known address within three days before the time the museum or archives repository
5 determines action is necessary; or

6 (2) The lender does not respond or will not agree to the protective measures the museum
7 or archives repository recommends and does not terminate the loan and retrieve the
8 property within three days.

9 (b) If a museum or archives repository applies conservation measures to property under
10 this article, or with the agreement of the lender, unless the agreement provides otherwise,
11 the museum or archives repository acquires a lien on the property in the amount of the costs
12 incurred by the museum or archives repository.

13 (c) The museum or archives repository is not liable for injury to or loss of the property if
14 the museum or archives repository:

15 (1) Had a reasonable belief at the time the action was taken that the action was necessary
16 to protect the property on loan or other property in the custody of the museum or archives
17 repository or that the property on loan was a hazard to the health and safety of the public
18 or the museum or archives repository staff; and

19 (2) Exercised reasonable care in the choice and application of conservation measures.

20 10-1-529.7.

21 This article shall not apply to objects held by museums pursuant to Part 1 of Article 7 of
22 Chapter 12 of Title 44, relating to American Indian human remains and burial objects held
23 by museums."

24 SECTION 3.

25 Article 5 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to
26 disposition of unclaimed property, is amended by striking Code Section 44-12-193, relating
27 to when property is held, issued, or is owing in the ordinary course of business of holder's
28 business presumed abandoned, and inserting in lieu thereof the following:

29 "44-12-193.

30 Except as provided in Article 17B of Title 10, all All tangible and intangible property,
31 including any income or increment thereon, less any lawful charges, that is held, issued, or
32 owing in the ordinary course of the holder's business and has remained unclaimed by the
33 owner for more than five years after it became payable or distributable is presumed
34 abandoned, except as otherwise provided by this article. Property is payable or distributable

1 for the purpose of this article notwithstanding the owner's failure to make demand or to
2 present any instrument or document required to receive payment."

3 **SECTION 4.**

4 Said article is further amended by striking subsection (a) of Code Section 44-12-214, relating
5 to report and remittance of persons holding property presumed abandoned under that article,
6 and inserting in lieu thereof the following:

7 "(a) Except as provided in Article 17B of Title 10, every Every person holding funds or
8 other property, tangible or intangible, presumed abandoned under this article shall report
9 and remit to the commissioner with respect to the property as provided in this Code
10 section."

11 **SECTION 5.**

12 All laws and parts of laws in conflict with this Act are repealed.